LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAR 20 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

NO. 862

OCTOBER TERM, 1957

JOSEPH A. CIRILLO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

C. FRANCIS FISHER
Counsel for Petitioner

1316 Frick Building
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

INDEX

	PAGE
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	3
Reason for granting the writ	4
Conclusion	5
Appendix—Statutes	6

CITATIONS

CASES:

Felton v. United States, 96 U.S. 699	4
United States v. Kahriger, 210 F.2d 565	3, 4
United States v. Murdock, 290 U.S. 389	2, 3, 4

STATUTES:

Internal Revenue Code of 1939, 53 Stat. 62, 26 U.S.C. § 145(a)	2
Internal Revenue Code of 1954, 68 A. Stat. 851, 26 U.S.C. § 7203	2

MISCELLANEOUS:

Annual Report of Commissioner of Internal Revenue—1957	4

IN THE

Supreme Court of the United States

NO. .....

OCTOBER TERM, 1957

JOSEPH A. CIRILLO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Joseph A. Cirillo prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on December 30, 1957.

OPINIONS BELOW

The judgment of conviction of the District Court is unreported. The opinion of the Circuit Court of Appeals is reported in .....F. 2d.....

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 30, 1957. A petition for rehearing was denied on February 18, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED

Absent proof of tax liability, whether proof of the receipt of income not subject to withholding tax together with a W-2 information form is sufficient proof of wilfulness in a prosecution for wilful failure to file an income tax return.

STATUTES INVOLVED

Internal Revenue Code of 1939, Section 145(a), 26 U. S. C., Section 145 (a); Internal Revenue Code of 1954, Section 7203, 26 U. S. C., Section 7203.

STATEMENT

An information was filed against Joseph A. Cirillo charging him with having wilfully failed to file individual income tax returns for the years 1953 and 1954 at the times prescribed by law.

The case came on for trial before a jury on June 10, 1957 at which time the prosecution offered proof that the petitioner was an attorney, that he had received income in an amount which required him to file individual income tax returns, that he had received from his employer an information (W-2) form showing the amount of his salary and withholding tax and information as to the requirements for filing a return, and that petitioner had failed to file a return.

Believing that the proof offered failed to satisfy the burden of proving wilfulness beyond a reasonable doubt as theretofore described in the cases of *United States v.*

Murdock, 290 U.S. 389, and *United States v. Kahriger*, 210 F. 2d 565 (3 Cir. 1954), the petitioner elected to invoke his constitutional privilege of not testifying in his own defense.

A motion for judgment of acquittal was denied by the trial court, the case was submitted to the jury, and they returned a verdict of guilty.

On appeal, the Circuit Court of Appeals, by Judge Hastie, affirmed the judgment of conviction concluding that receipt by the petitioner of the W-2 form together with the receipt of income from which no tax had been withheld was sufficient evidence of "wilfulness" in the absence of an explanation of the failure to file.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In considering the evidence of the prosecution in the light of its being unexplained or unrefuted.

2. In concluding that knowledge of the duty to file a return and the receipt of income not subject to withholding tax is sufficient evidence of wilfulness although there is no proof of tax liability.

3. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The question presented is of substantial importance in the enforcement of the criminal provision of the Internal Revenue Code as related to the number of taxpayers who have the duty but fail to file tax returns.[1]

Settlement of the question by this Court is plainly in the public interest since a great number of persons may be subject to similar prosecution for wilful failure to file an income tax return even though there may be no tax liability involved and even though they had no criminal motive or intent in not filing.

2. The decision of the Circuit Court is believed to be in conflict with the decision of this Court in *Felton v. United States,* 96 U.S. 699, and *United States v. Murdock,* 290 U. S. 389, and also with a prior decision of the Third Circuit Court of Appeals in *United States v. Kahriger,* 210 F. 2d 565, upon which the petitioner relied in not producing evidence in his defense at the trial. Each of those cases held that knowledge of the duty and the voluntary failure to file a return was not sufficient evidence of bad faith or evil intent.

3. The question as it relates to the constitutional privilege of a defendant in a criminal action remaining silent is equally of substantial importance. It is well

---

1. In 1956, the Internal Revenue Service secured the filing of 838,284 delinquent tax returns upon which was assessed a total of $86,689,000.00 in tax, penalty and interest. In 1957, 886,627 delinquent tax returns were filed and a total of $111,557,000.00 in tax, penalty and interest was assessed. *Annual Report of Commissioner of Internal Revenue, 1957.*

settled that a defendant in a criminal action need not testify or produce any defense, and that his silence affords no basis for any inference against him. Yet the Circuit Court, in affirming the judgment of conviction considered the evidence of the prosecution in the light that it was unrefuted and the failure to file was unexplained.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

C. FRANCIS FISHER
Counsel for Petitioner

March 17, 1958

APPENDIX A

26 U.S.C.

Sec. 145. Penalties

(a) Failure to file returns, submit information, or pay tax. Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who wilfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000.00, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Sec. 7203. Wilful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, makes such return, keep such records, or supply such information, at the time or times required by law or regu-

lations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000.00, or imprisoned not more than 1 year, or both, together with the costs of prosecution.